

Nolan James Fulcher

NAME

T-38393

PRISON NUMBER

California Rehabilitation Center, 306-36L

PO Box 3535 Norco, CA 92860-0991

CURRENT ADDRESS OR PLACE OF CONFINEMENT

Norco, CA 92860-0991

CITY, STATE, ZIP CODE

FILED

JUL - 7 2008

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY *[Signature]* DEPUTY

2254 ☒ 1983

FILING FEE PAID

Yes ☒ No ☒

FF MOTION FILED

Yes ☒ No ☒

COPIES SENT TO

Court ☒ Prosecutor ☒

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Nolan James Fulcher
(FULL NAME OF PETITIONER)

PETITIONER

v.

Matt Martel
(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED
PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE
CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

Edmund G. Brown Jr.
The Attorney General of the State of
California, Additional Respondent.

Civil No

'08 CV 1213 H AIB

(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack:
*San Diego County Superior Court, South County Division,
South County Regional Center, 500 Third Avenue, Department 9,
Chula Vista, CA 91910-5694*
2. Date of judgment of conviction: *August 18, 2006*
3. Trial court case number of the judgment of conviction being challenged:
San Diego County Superior Court No. SCS200450
4. Length of sentence: *Ten (10) years*

CR

5. Sentence start date and projected release date: 9-26-06 and 4-15-2011

6. Offense(s) for which you were convicted or pleaded guilty (all counts):

Possession of cocaine base and Possession of cocaine (Health and Safety Code, Section 11350 subdivision (a); counts 1 and 2) and transportation of cocaine (§ 11352, subdivision (a); counts 3 and 4). In bifurcated proceeding.

7. What was your plea? (CHECK ONE)

(a) Not guilty ☒

(b) Guilty ☐

(c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)

(a) Jury ☒

(b) Judge only ☐

9. Did you testify at the trial?

☒ Yes ☐ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the California Court of Appeal?

☒ Yes ☐ No

11. If you appealed in the California Court of Appeal, answer the following:

(a) Result: The Court of Appeal affirmed the judgment.

(b) Date of result (if known): February 20, 2008

(c) Case number and citation (if known): Court of Appeal No. D049562

(d) Names of Judges participating in case (if known):

O'ROURKE, J., McCONNELL, P.J., and NARES, J.

(e) Grounds raised on direct appeal:

Trial Court erred in: (1) permitting the People to file a second amended information adding the transportation charges, and denying my motion to continue the trial and (2) denying my motion for acquittal on the transportation charges.

12. If you sought further direct review of the decision on appeal by the California Supreme Court (e.g., a Petition for Review), please answer the following:

(a) Result: The Petition for review was denied

(b) Date of result (if known): Filed: April 30, 2008

(c) Case number and citation (if known):

S162008

(d) Grounds raised:

* Trial Court erred in: (1) permitting the People to file a second amended information adding the transportation charges and denying my motion to continue the trial and (2) denying my motion for acquittal on the transportation charges.

13. If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to that petition:

- (a) Result:
- (b) Date of result (if known):
- (c) Case number and citation (if known):
- (d) Grounds raised:

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Superior Court?

☐ Yes ☒ No

15. If your answer to #14 was "Yes," give the following information:

- (a) California Superior Court Case Number (if known):
- (b) Nature of proceeding:
- (c) Grounds raised:
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No
- (e) Result:
- (f) Date of result (if known):

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Court of Appeal?

☐ Yes ☒ No

17. If your answer to #16 was "Yes," give the following information:

- (a) California Court of Appeal Case Number (if known):
- (b) Nature of proceeding:
- (c) Names of Judges participating in case (if known)
- (d) Grounds raised:
- (e) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No
- (f) Result:
- (g) Date of result (if known):

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the California Supreme Court?

☐ Yes ☒ No

19. If your answer to #18 was "Yes," give the following information:

- (a) California Supreme Court Case Number (if known):
- (b) Nature of proceeding:
- (c) Grounds raised:
- (d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No
- (e) Result:
- (f) Date of result (if known):

GROUND FOR RELIEF

22. State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground. (e.g. what happened during the state proceedings that you contend resulted in a violation of the constitution, law or treaties of the United States.) If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) **GROUND ONE:**

The Trial Court abused its discretion and violated my Due Process right to a fair trial and to prepare an adequate defense when it granted the prosecution's motion to file a second amended information at the beginning of the trial and denied my request for continuance.

Supporting FACTS:

When the court granted the prosecution's motion to file a second amended information, my defense counsel asked for time to research the issues and prepare a more formal objection. At this point all our defense was based on the possession for sales charges. I did not know anything about transportation laws. Therefore, I needed to confer with my attorney in order to prepare a defense and a course of action. It is a fundamental right to be advised of the charges against a person, if I was then denied sufficient time to prepare an adequate defense, that right is illusory. Had the trial court granted a brief postponement of the trial, I may have decided to present different witnesses or I may have elected not to testify on my own behalf.

The transportation charges were clearly a miscarriage of justice. Clearly they were based on a "Classic swearing match." The Police Officer offered his version of the facts (stating it was 2-3 minutes after I passed him, that he came into contact with me. I stated during sworn testimony that it was between 5-10 minutes after I passed the Police officer, that I came into contact with him. So in this case an observer of the incident is critical.

Did you raise GROUND ONE in the California Supreme Court?

☒ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review) habeas petition):
- (2) Case number or citation: S162008
- (3) Result (attach a copy of the court's opinion or order if available):
The petition for review was denied.

(b) **GROUND TWO:**

The trial court abused its discretion when it denied my motion for acquittal on the transportation charges at the end of the prosecution's case. The prosecution failed to present evidence to show the point in time when I came into possession of the drugs.

Supporting FACTS:

The Police Officer testified that he saw me in a car and then lost sight of me. Eventually when I seen the Police Officer I was standing by my vehicle. In transportation cases an officer stops a person driving in a vehicle or walking. In my case I was simply standing. No evidence was presented by the people to show when or how I came into possession of the drugs.

Acquittal on the transportation charges under Penal Code section 1118.1 was necessary because the people failed to show I had transported the drugs found in my possession.

There was no substantial evidence to show that I ran a short distance from the Police Officer. Once again this is a "Classic Swearing match". The court accepted the Police Officers version that I ran a short distance from him. However, I was never charged with resisting arrest or evading an officer. I testified that I never attempted to run from the officer, that is why I was never charged with resisting arrest.

The conclusion that I transported the drugs while driving my vehicle could only be based on speculation and conjecture, not evidence of solid value. Finally, I would like to point out how is it possible to be found guilty of Transportation of drugs for sales, when the jury found me guilty of Possession of Drugs for Personal Use. The judge felt I had the drugs for sales and not for my own use. However, I asked for a jury trial not a trial where the judge determines a guilt based on speculation. So I ask, How can you have drugs for personal use and for sale? That seems to be a contradiction.

Did you raise GROUND TWO in the California Supreme Court?

☒ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e. petition for review, habeas petition):
- (2) Case number or citation: 5162008
- (3) Result (attach a copy of the court's opinion or order if available):

The petition for review was denied.

(c) **GROUND THREE:**

Supporting FACTS:

Did you raise GROUND THREE in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition):
- (2) Case number or citation:
- (3) Result (attach a copy of the court's opinion or order if available):

(d) **GROUND FOUR:**

Supporting FACTS:

Did you raise GROUND FOUR in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

- (1) Nature of proceeding (i.e., petition for review, habeas petition):
- (2) Case number or citation:
- (3) Result (attach a copy of the court's opinion or order if available):

23. Do you have any petition or appeal now pending in any court, either state or federal, pertaining to the judgment under attack?

☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court:

(b) Case Number:

(c) Date action filed:

(d) Nature of proceeding:

(e) Name(s) of judges (if known):

(f) Grounds raised:

(g) Did you receive an evidentiary hearing on your petition, application or motion?

☐ Yes ☐ No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Linda Navarro, Esq. CABA#51228

9 Second Avenue
Chula Vista, CA 92001

(b) At arraignment and plea SAA

(c) At trial SAA

(d) At sentencing SAA

(e) On appeal Patricia L. Brisbois

Attorney at Law
P.O. Box 518
TUALATIN, OR 97062

(f) In any post-conviction proceeding .

(g) On appeal from any adverse ruling in a post-conviction proceeding:

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

☐ Yes ☒ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

☐ Yes ☐ No

28. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 2254 habeas cases filed in this district, the parties may waive their right to proceed before a district judge and consent to magistrate judge jurisdiction. Upon consent of all the parties under 28 U.S.C. § 636(c) to such jurisdiction, the magistrate judge will conduct all proceedings including the entry of final judgment. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to consent to a magistrate judge as it will likely result in an earlier resolution of this matter. If you request that a district judge be designated to decide dispositive matters, a magistrate judge will nevertheless hear and decide all non-dispositive matters and will hear and issue a recommendation to the district judge as to all dispositive matters.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including the entry of final judgment, by indicating your consent below.

Choose only one of the following:

☒ Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

☐ Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

29. Date you are mailing (or handing to a correctional officer) this Petition to this court:

June 30, 2008

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. Except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1987, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM)

I (a) PLAINTIFFS

Nolan James Fulcher

Martel, et al

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Riverside
(EXCEPT IN U.S. PLAINTIFF CASES)

154-198

FILING FEE PAID

Yes ☒ No ☒

BY MOTION FILED

Yes ☒ No ☒

COMPLAINT NO

Count ☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9 ☐ 10 ☐ 11 ☐ 12 ☐ 13 ☐ 14 ☐ 15 ☐ 16 ☐ 17 ☐ 18 ☐ 19 ☐ 20 ☐ 21 ☐ 22 ☐ 23 ☐ 24 ☐ 25 ☐ 26 ☐ 27 ☐ 28 ☐ 29 ☐ 30 ☐ 31 ☐ 32 ☐ 33 ☐ 34 ☐ 35 ☐ 36 ☐ 37 ☐ 38 ☐ 39 ☐ 40 ☐ 41 ☐ 42 ☐ 43 ☐ 44 ☐ 45 ☐ 46 ☐ 47 ☐ 48 ☐ 49 ☐ 50 ☐ 51 ☐ 52 ☐ 53 ☐ 54 ☐ 55 ☐ 56 ☐ 57 ☐ 58 ☐ 59 ☐ 60 ☐ 61 ☐ 62 ☐ 63 ☐ 64 ☐ 65 ☐ 66 ☐ 67 ☐ 68 ☐ 69 ☐ 70 ☐ 71 ☐ 72 ☐ 73 ☐ 74 ☐ 75 ☐ 76 ☐ 77 ☐ 78 ☐ 79 ☐ 80 ☐ 81 ☐ 82 ☐ 83 ☐ 84 ☐ 85 ☐ 86 ☐ 87 ☐ 88 ☐ 89 ☐ 90 ☐ 91 ☐ 92 ☐ 93 ☐ 94 ☐ 95 ☐ 96 ☐ 97 ☐ 98 ☐ 99 ☐ 100 ☐ 101 ☐ 102 ☐ 103 ☐ 104 ☐ 105 ☐ 106 ☐ 107 ☐ 108 ☐ 109 ☐ 110 ☐ 111 ☐ 112 ☐ 113 ☐ 114 ☐ 115 ☐ 116 ☐ 117 ☐ 118 ☐ 119 ☐ 120 ☐ 121 ☐ 122 ☐ 123 ☐ 124 ☐ 125 ☐ 126 ☐ 127 ☐ 128 ☐ 129 ☐ 130 ☐ 131 ☐ 132 ☐ 133 ☐ 134 ☐ 135 ☐ 136 ☐ 137 ☐ 138 ☐ 139 ☐ 140 ☐ 141 ☐ 142 ☐ 143 ☐ 144 ☐ 145 ☐ 146 ☐ 147 ☐ 148 ☐ 149 ☐ 150 ☐ 151 ☐ 152 ☐ 153 ☐ 154 ☐ 155 ☐ 156 ☐ 157 ☐ 158 ☐ 159 ☐ 160 ☐ 161 ☐ 162 ☐ 163 ☐ 164 ☐ 165 ☐ 166 ☐ 167 ☐ 168 ☐ 169 ☐ 170 ☐ 171 ☐ 172 ☐ 173 ☐ 174 ☐ 175 ☐ 176 ☐ 177 ☐ 178 ☐ 179 ☐ 180 ☐ 181 ☐ 182 ☐ 183 ☐ 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1157 ☐ 1158 ☐ 1159 ☐ 1160 ☐ 1161 ☐ 1162 ☐ 1163 ☐ 1164 ☐ 1165 ☐ 1166 ☐ 1167 ☐ 1168 ☐ 1169 ☐ 1170 ☐ 1